

Award No. 2715
Docket No. 2507
2-AT&SF-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY (Western Lines)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Car Inspector M. S. Abeyta has been unjustly removed from service since February 20, 1956.

2. That accordingly the Carrier be ordered to reinstate this employe to his seniority, vacation and other rights unimpaired with compensation for all time lost retroactive to the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: Car Inspector M. S. Abeyta, hereinafter referred to as the claimant, was first employed by the carrier as a laborer in the year 1929 at Belen, New Mexico. The claimant has a carman's seniority date of June 3, 1954, working the third shift, wherein he worked until removed from service on February 20, 1956.

The carrier's master mechanic summoned the claimant to appear for investigation on January 28, 1956, at 2:00 P.M., to stand trial to develop the facts and place responsibility in connection with report that the claimant was indifferent and insubordinate to his foreman at about 6:50 A.M., January 21, 1956. Investigation was held January 28, 1956, and a copy of the transcript thereof is submitted herewith and identified as Exhibit A.

The carrier's general foreman made the final election to remove this claimant from the service on February 20, 1956, which is affirmed by a copy of letter submitted herewith and identified as Exhibit B.

This dispute has been handled up to and with the highest designated officer of the carrier to whom such appeals are subject with the result that he has declined to adjust it.

"Mr. M. S. Abeyta has been in continuous service at Belen since July 15, 1943 and his record is filled with many similar instances as charged. All, of which, renders his integrity quite questionable, and there has never been an occasion to question Foreman Brown's integrity. Therefore, the statement of Mr. Brown, which was contradicted by Abeyta, is sufficient evidence to stand up and establish the charges of indifference and insubordination."

In conclusion, carrier asserts—

In the light of all the facts there can be no doubt in the mind of any fair thinking person that Mr. Abeyta was guilty of the charges preferred against him. That he denied insubordination was self-serving and his long record of lack of cooperation with the supervision and his fellow workmen makes it impossible to accept his testimony as reflecting the true facts, all of which makes it crystal-clear that he should not be returned to the carrier's service. Carrier submits that the claim on behalf of Mr. M. S. Abeyta is without support of the agreement, lacks merit and, therefore, requests this Board to deny the claim in its entirety.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

It may be fairly concluded from a careful review of this docket, that although there may or may not have been an operations hazard involved, the reluctance and refusal of the grievant to obey the order of his supervisor was insubordination. In clear and present cases of danger an employe should properly be permitted to decline a task which would imperil his life or limb. In doubtful cases the employe should point out the risk and having registered his protest should then proceed to do the ordered chore. To avoid a repetition, or to resolve the disputed practice, he should follow up by filing a grievance showing wherein the rules have been violated. His duty under the circumstances is thus discharged. The supervisor is the one primarily responsible then, and the employe does not have to elect himself as the principal guardian of everyone's safety.

The grievant was given a fair hearing with full and complete opportunity to explain all the details of the occurrence. Our review does not disclose any violation of the rules by the carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of December, 1957.